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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
THROWER, LARRY W	

ART UNIT	PAPER NUMBER
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NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed August 19, 2009 have been fully considered but they are not persuasive.

- Applicant argues that the second material of Carrow *et al.* is not foamable. This argument has been considered but is not persuasive. Carrow *et al.* teaches that there is a critical time period when the second polymer should be added. That critical time period is after the gas bubbling of the first polymer has substantially ended. "If the charge of the second polymer is added too soon, i.e., while gas is still forming, **blow holes** appear in the inner layer of the final article." (col. 3, line 67 - col. 4, line 2; emphasis added). These "blow holes" in the second polymer which Carrow *et al.* seeks to avoid, are caused by the gas bubbling from the **first** polymer and blowing or extending through the second polymer (col. 5, lines 60-63). For a reference to teach away, the reference must suggest that the claimed combination should be avoided as undesirable or ineffective. See *In re Haruna*, 249 F.3d 1327, 1335 (Fed. Cir. 2001); *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Carrow *et al.* makes no such suggestion. Carrow *et al.* does not constitute a teaching away from the second layer being a foam polymer because the disclosure does not criticize, discredit, or otherwise discourage the step of reaching a foaming temperature for the second quantity of material. Carrow *et al.* merely teaches that the second polymer should be added at a critical time period to avoid blow holes **caused by gas**

bubbles from the first polymer from extending through the second polymer (col. 5, lines 60-63).

- Applicant points to claim 1 of Carrow *et al.* as providing support for teaching that the second material is not foamable. However, consistent with the specification of Carrow *et al.* as described above, claim 1 of Carrow *et al.* recites "said second continuous layer being at least substantially free of **said** bubbles," where said bubbles are described earlier in the claim as being formed in the first continuous layer (col. 6, lines 57-58). Therefore, again, Carrow *et al.* teaches that the second polymer is added at a critical time period **to avoid gas bubbles from the first polymer layer** from extending through the second polymer thereby causing blow holes (col. 5, lines 60-63). Thus, directly contrary to Applicant's assertion, nothing in the disclosure of Carrow *et al.* teaches that the second material is not foamable or teaches against foaming the second layer.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LARRY THROWER whose telephone number is 571-270-5517. The examiner can normally be reached on Monday through Friday from 9:30AM-6PM est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina A. Johnson can be reached on 571-272-1176. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Larry Thrower/
Examiner, Art Unit 1791

/Christina Johnson/

Supervisory Patent Examiner, Art Unit 1791